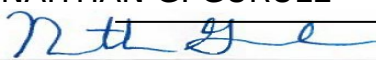
	LOS LUNAS POLICE DEPARTMENT		
	OPERATIONS	NUMBER: OPR.02.07	EFFECTIVE DATE: February 28, 2014
	SUBJECT: Eyewitness Identification- Photo Lineups		REVIEW DATE: February 28, 2017
	AMENDS/ SUPERSEDES: OPR.02.01 pgs. 24, 25 (XLVII. A-F), (XLVIII. A-H),(XLIX A-B)		NMSA:
NMMLEPSC STANDARDS:		APPROVED BY CHIEF OF POLICE NAITHAN G. GURULE  Signature	

I. POLICY

It is the policy of this department that a photo lineup be done using the highest standards possible, to identify the guilty and protect the innocent.

II. PURPOSE

In 1989, an innocent person was released from prison because of a new technology called DNA. Since then, DNA has been largely responsible for over 300 people being released from prison. The average sentence was thirteen years; eighteen persons had been on death row.

The majority of people released had been convicted because of mistaken identification. In recent decades, scientific research has found that simple changes in administering photo lineups can raise the standards and accuracy of photo lineups.

It is the purpose of this policy to provide law enforcement officers the means to do photo lineups based upon recent scientific research and practice.

The department does NOT require officers to conduct phot lineups for ALL instances requiring eyewitness identification. This policy is reserved for FELONY cases in which eyewitness identification is necessary. Petty Misdemeanor/Misdemeanor cases do not require phot lineups to identify suspects. (February 28, 2017)

III. DEFINITIONS

A. Photo Lineup

An identification procedure in which an array of photographs, including a photograph of the suspect and additional photographs of non-suspects, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

B. Sequential Lineup

When photographs are shown to a victim or witness one at a time, with an independent decision on each, before the next photo is shown. In a traditional six-pack photo array, witnesses view all photographs at the same time. Unfortunately, comparison shopping may occur as witnesses compare one photo with another to determine which photo most resembles the offender. The result is a higher rate of false identifications in a photo lineup when the offender is not present.

Lab studies and research favor a sequential photo lineup, where an eyewitness is shown one photo after another. This encourages an eyewitness to compare individual photos to their memory of the offender rather than to other photos.

C. Blind Administrator

The person administering the photo lineup doesn't know which person in the photo lineup is the suspect. A person doing a photo lineup may inadvertently give clues to a witness as to who the suspect is. This can be avoided when the person showing the photographs doesn't know which photograph is the suspect. This definition includes the following:

"Double blind" means neither the police officer administering a photo lineup or witness knows the identify of a suspect; "single blind" means the officer is aware of a suspect, but is positioned where he or she does not know which photo the witness is using.

D. Confidence Statements

A statement in the victim or witness' own words, articulating their level of confidence in the identification taken at the time the identification is made.

IV. PROCEDURES

A. PRIOR TO A PHOTO LINEUP

Prior to a photo lineup, law enforcement shall record as complete a description as possible of the suspect and the conditions in which the eyewitness saw the suspect in their own words. The statement shall include information regarding the conditions under which the eyewitness observed the suspect including:

- a. Location where the offense took place,
- b. Amount of time to observe the suspect,
- c. Distance between the witness and the suspect,
- d. Obstructions to observing the suspect,
- e. Lighting conditions,
- f. Weather conditions,
- g. Impairments – does the eyewitness wear glasses or contact lenses and were they wearing them at the time,
- h. The degree of attention,
- i. Was the eyewitness under the influence of alcohol? If so, how much,
- j. Had the eyewitness taken any kind of drugs that day? If so, what kind.

The administrator doing the photo lineup shall note whether the eyewitness was wearing glasses or contact lenses at the time of the identification procedure.

B. VERBAL INSTRUCTIONS TO THE EYEWITNESS

The eyewitness shall be advised, without other eyewitnesses present, that:

- a. It is just as important to eliminate innocent persons from suspicion as it is to identify guilty parties,

- b. The suspect may or may not be in the photo lineup,
- c. The witness should not feel compelled to make an identification,
- d. The investigation will continue whether or not an identification is made,
- e. The appearance of the suspect may have changed since the incident,
- f. The person giving the test does not know who the suspect is,
- g. Individual photos will be viewed **ONE AT A TIME**,
- h. The photos are in random order,
- i. The witness has as much time as needed in making a decision about each photo before moving to the next one,
- j. Ask for a verbal or written acknowledgment indicating they understand the instructions,
- k. Ask the witness if they have any questions.

C. PREPARING THE PHOTO LINEUP

- a. The photograph of the suspect shall be contemporary and shall resemble his or her appearance at the time of the offense,
- b. There shall be nothing on the photographs themselves or the background context that would make any of them stand out,
- c. A photo lineup shall be composed so that non- suspects generally resemble the suspect,
- d. Avoid using photos of non-suspects who so closely resemble the suspect that it would be difficult to distinguish the suspect from a non-suspect,
- e. At least five non-suspects shall be included in the photo lineup, in addition to the suspect,
- f. No information regarding prior arrests shall be visible on the photos,
- g. Put an ID number on the back of each photo and refer to the photo by that number.

D. IF THERE ARE MULTIPLE EYEWITNESS

- a. Instructions are to be given to witnesses separately,
- b. Each witness shall view the photo lineup separately,
- c. The suspect shall be placed in a different position in the photo lineup for each witness,
- d. Witnesses shall not be permitted to communicate with one another until all identification procedures have been completed.

E. IF THERE ARE MULTIPLE SUSPECTS

- a. Each photo lineup shall include only one suspect.

F. NEW TECHNOLOGY

- a. Software technology is available that can provide similar looking photos for a photo lineup.

G. PRESENTING THE PHOTO LINEUP

- a. Photos shall be shown to the witness sequentially, **ONE AT A TIME.**

H. AFTER THE PHOTO LINEUP

- a. If a witness makes an identification before all the photos are shown, the rest of the photos still need to be shown,
- b. If a witness wants to see a particular photo, all photos need to be shown,
- c. Following the photo array, the witness shall provide a statement, in their own words, giving their level of confidence in their identification,
- d. Do not ask the witness for a numerical rating of their confidence level,
- e. If the witness identified a person as a suspect, the witness shall not be given any information concerning such person until the administrator obtains the eyewitness's confidence statement.

Using these guidelines should in no way imply that identifications made without these procedures are inadmissible or otherwise in error.

I. RECORDING THE RESULTS

The administrator needs to preserve the outcome of the procedure by documenting the results.

This includes:

- a. Date and time of the photo lineup,
- b. Names of all persons present at the photo lineup,
- c. Sources of all photographs used,
- d. Record results whether or not an identification is made,
- e. Witness is not to write or mark any materials that may be used in a subsequent photo lineup,
- f. Have the results signed and dated by the eyewitness,
- g. A video and audio recording of the photo lineup, when possible. This will help avoid disagreements about what happened later,
- h. Photo lineup information should be maintained by the primary investigator.

J. "FOLDER SHUFFLE" METHOD

Law Professor Brandon Garrett of the University of Virginia notes the folder system is easy. "You just put the pictures, one in each folder, and shuffle the folders with a couple of extra folders that are blank. The witness can open the folders and look at the pictures without the detective being able to see what they're looking at."

"It's a really simple way to make a line-up both sequential and double-blind, two of the major reforms. It doesn't rely upon the traditional "six-pack" photo array."

K. PREPARING THE FOLDER SHUFFLE METHOD

- a. Obtain one (1) suspect photo that resembles the description of the perpetrator provided by the witness.

- b. Obtain five (5) filler photographs that match the description of the suspect.
- c. Obtain ten (10) file folders. (Four of the folders will not contain any photos and will serve as 'dummy folders').
 - 1. Number the outside of each folder #1 through #10,
 - 2. Staple or tape one (1) non-suspect photo to the inside of folder #1,
 - 3. The individual administering the lineup should put the suspect photos and the other four non-suspect photos into Folders #2-6 and shuffle the folders so that the administrator is unaware which folder the suspect is in,
 - 4. The remaining folders (Folders #7-10) will contain a page with the following text: "THIS FOLDER INTENTIONALLY LEFT BLANK." This is done so that the witness does not know when she or he has seen the last photo.

L. PRESENTING THE FOLDER SHUFFLE METHOD

- a. Without looking at the photo in the folder, the administrator is to hand each folder to the witness individually,
- b. The witness will view the photo in the folder and then return it to the administrator before being presented with the next folder,
- c. The order of the photos should be preserved, in a facedown position, for documentation purposes,
- d. The witness may (at their request) review the folders a second time. If so, all folders are provided in the same order of presentation,
- e. After photos are shown, follow the procedures noted previously.

M. JUVENILE OFFENDERS/ PHOTO LINEUPS

- a. Photo lineup is prepared the same as for an adult. Use of this procedure must be in accordance with the New Mexico Children's Code dealing with photographs of children.

N. CONTINGENCY'S

a. WHAT IF A "DOUBLE BLIND" PHOTO LINEUP ISN'T PRACTICABLE?

Sometimes a "double blind" photo lineup isn't practicable. It may be a small town where another person to do a photo lineup isn't available. It may be a high profile case where every officer knows who the offender is. Even though an officer may know who the offender is, it's still possible to do a "single blind" photo lineup.

b. WHAT IF A SECOND PHOTO LINEUP IS NEEDED

When a witness doesn't identify someone, another suspect may develop. Use the same procedures but remember this: the non-suspects used in a subsequent photo lineup should be different from the non-suspects used in the first photo lineup.

V. **SOURCES**

- A. The Innocence Project.
- B. Police Executive Research Forum.
- C. United States Department of Justice, Eyewitness Evidence: A Guide for Law Enforcement, and numerous state and city policies.

VI. **CONTRIBUTORS**

- A. Attorney General for the State of New Mexico.
- B. New Mexico District Attorneys' Association.
- C. NM Department of Public Safety – Law Enforcement Academy.